Rainbow Reproductions, Inc.d/b/a Central Apex Reproductions *and* Teamsters Local Union No. 610, affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 14–CA–25217

February 26, 1999

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Upon a charge and an amended charge filed by the Union on August 3 and September 30, 1998, respectively, the Acting General Counsel of the National Labor Relations Board issued a complaint on September 30, 1998, against Rainbow Reproductions, Inc. d/b/a Central Apex Reproductions, the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charge, and complaint, the Respondent failed to file an answer within the time period set forth in Section 102.20 of the Board's Rules and Regulations.

On January 15, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On January 19, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

The undisputed allegations in the Motion for Summary Judgment disclose that the Region, in a telephone conversation on November 5, 1998, advised the Respondent's counsel that the Respondent's answer was past due and that unless an answer was received by November 12, 1998, a Motion for Summary Judgment would be filed. The Region repeated this message in a letter to the Respondent's counsel dated November 5, 1998.

The Motion for Summary Judgment also states without contradiction that on July 14, 1998, the Respondent signed a settlement agreement in Case 14–CA–24958, which was approved by Administrative Law Judge Earl E. Shamwell Jr. Further, the Motion states that because the General Counsel believed that the conduct alleged in the complaint in the present case, Case 14–CA–25217, violated the settlement agreement in Case 14–CA–24958, the General Counsel filed a motion with Judge Shamwell on October 14, 1998, which requested the judge to reopen the record in Case 14–CA–24958, set aside the settlement agreement in that case, and consolidate that case with the present case. The judge has not yet ruled on that motion.

On November 12, 1998, the Respondent filed a document captioned "Answer," which in its opening paragraph states "COMES NOW, Rainbow Reproductions, Inc., by counsel, and makes answer to Motion to set aside as follows. . . ."

The General Counsel's Motion for Summary Judgment asserts that on December 18, 1998, the Region again contacted the Respondent's counsel and advised him that the Region viewed the document that the Respondent filed on November 12 as a response to the General Counsel's October 14 motion, and not as an answer to the complaint in the present case. Accordingly, the Region informed the Respondent's counsel, by letter and telephone conversation, that if an answer was not received by December 24, a motion for summary judgment would be filed.[1]

We find that the document filed by the Respondent on November 12, 1998, does not constitute a proper answer to the complaint allegations under Sec. 102.20 of the Board's Rules and Regulations because it fails to address the substance of the complaint allegations and therefore is legally insufficient under the Board's rules.[2] See *Triple H Fire Protection*, 326 NLRB No. 46 (Aug. 27, 1998); *Breeden Painting Co.*, 314 NLRB 870 (1994). This document does not address any of the factual or legal allegations set forth in the instant complaint, but instead responds solely to the General Counsel's motion to rescind the settlement agreement in Case 14–CA–24958. As noted above, the document itself states that it is an "answer to Motion to set aside."

Accordingly, in the absence of good cause being shown for the failure to file a timely and proper answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Missouri corporation with an office and place of business in St. Louis,

[1]In addition, on December 30, 1998, the Region called the Respondent's counsel, and left a message with the receptionist that if an answer was not received by the end of that day, a summary judgment motion would be filed.

[2]As noted above, the Respondent did not file a response to the Notice to Show Cause, and there has been no contention by the Respondent that the November 12 document constitutes an answer to the complaint.

Missouri, has been engaged in providing nonretail offset printing services. Based on a projection of its operations since about January 5, 1998, at which time the Respondent commenced its operations, the Respondent, in conducting its business operations described above, will sell and ship from its St. Louis, Missouri facility goods valued in excess of $50,000 directly to points outside the State of Missouri, and will annually purchase and receive at its St. Louis facility goods valued in excess of $50,000 directly from points outside the State of Missouri.

On about January 5, 1998, the Respondent purchased the business of Central Apex Engraving, and since then has continued to operate the business of Central Apex Engraving in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Central Apex Engraving. Based on the operations described above, we find that the Respondent has continued the employing entity and is a successor to Central Apex Engraving. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On July 14, 1998, shortly after the conclusion of the hearing in Cases 14–CA–24958 and 14–CA–25112, the Respondent's president and agent, Gary Stallings, in a meeting with employees at the Respondent's facility: (1) informed employees that the Respondent was discharging employees because of charges filed with the National Labor Relations Board, and (2) threatened employees with elimination of the second shift because of charges filed with the Board.

Also, on July 14, 1998, in a second meeting of employees at the Respondent's facility, Stallings: (1) informed an employee that the employee could not attend a company meeting because of that employee's union activities; (2) informed employees that it would not bargain in good faith with the Union; and (3) threatened employees with plant closure because charges had been filed with the Board.

On about August 4, 1998, Respondent President Stallings, in a telephone conversation, interrogated an employee about employees' union activities, and, on that same date at the Respondent's facility, interrogated employees about their union activities.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All drivers and shipping/receiving employees employed by Respondent at its St. Louis, Missouri facility, EXCLUDING office clerical and professional employees, guards, supervisors as defined in the Act, and all other employees.

From about 1970 until about January 5, 1998, the Union had been the exclusive collective-bargaining representative of the unit employees employed by Central Apex Engraving, and during that period of time, the Union had been recognized as such representative by Central Apex Engraving. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 1996 through December 31, 1998.

From about 1970 until about January 5, 1998, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the unit employees employed by Central Apex Engraving. Since about January 5, 1998, based on the Respondent's status as the successor employer to Central Apex Engraving, the Union has been the designated exclusive collective-bargaining representative of the unit employees. At all material times since about January 5, 1998, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit set forth above.

On about July 14, 1998, the Respondent changed the vacation benefits for unit employees which were in effect prior to January 5, 1998. Between about January 5, 1998 and September 18, 1998, the Respondent failed and refused to continue in effect health and welfare and pension benefits for unit employees which were in effect prior to January 5, 1998. Between about July 14, 1998 and September 18, 1998, the Respondent failed and refused to continue in effect wage rates for a unit employee which were in effect prior to January 5, 1998. Since about July 14, 1998, the Respondent changed the work assignments for a unit employee which were in effect prior to January 5, 1998.

The subjects set forth in the above paragraph relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purpose of collective bargaining.

The Respondent engaged in the conduct described above without prior notice to the Union and without affording it an opportunity to bargain with the Respondent concerning this conduct and its effects.

On about July 16, 1998, the Respondent bypassed the Union and dealt directly with unit employees by negotiating with them about their working hours.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. Further, by the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining

representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to restore the unit employees' vacation, health, welfare, and pension benefits which were in effect prior to January 5, 1998, and to restore the wage rates and work assignments which were in effect prior to January 5, 1998.

In addition, we shall order the Respondent to reimburse employees for any expenses ensuing from the Respondent's unlawful failure to maintain the pre-January 5, 1998 vacation, health, welfare, and pension benefits, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Further, we shall order the Respondent to make unit employees whole for any losses suffered as a result of the Respondent's unilateral change in wage rates and work assignments, in accordance with *Ogle Protection Services*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Rainbow Reproductions, Inc. d/b/a Central Apex Reproductions, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that it was discharging employees because of charges filed with the National Labor Relations Board.

(b) Threatening employees with plant closure and with elimination of the second shift because charges had been filed with the Board.

(c) Informing employees that they may not attend company meetings because of their union activities.

(d) Informing employees that it would not bargain in good faith with Teamsters Local Union No. 610, affiliated with International Brotherhood of Teamsters, AFL–CIO.

(e) Interrogating employees about their own and their fellow employees' union activities.

(f) Unilaterally changing the vacation benefits for unit employees which were in effect prior to January 5, 1998, without prior notice to the Union and without affording it an opportunity to bargain regarding these benefits.

(g) Failing and refusing to continue in effect the wage rates and the health and welfare and pension benefits for unit employees which were in effect prior to January 5, 1998, without prior notice to the Union and without affording it an opportunity to bargain regarding these benefits.

(h) Unilaterally changing the work assignments for unit employees which were in effect prior to January 5, 1998, without prior notice to the Union and without affording it an opportunity to bargain regarding these assignments.

(i) Bypassing the Union and dealing directly with unit employees by negotiating with them about their working hours.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, restore the wage rates, work assignments, and vacation, health, welfare, and pension benefits for unit employees which were in effect prior to January 5, 1998.

(b) Make whole the unit employees for any losses attributable to its unlawful unilateral conduct, as set forth in the remedy section of this Decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, copies of the attached notice marked "Appendix".[3] Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 5, 1998.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. February 26, 1999

Wilma B. Liebman, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT inform you that we are discharging employees because of charges filed with the National Labor Relations Board.

WE WILL NOT threaten you with plant closure and with elimination of the second shift because charges had been filed with the Board.

WE WILL NOT inform you that you may not attend company meetings because of your union activities.

WE WILL NOT inform you that we would not bargain in good faith with Teamsters Local Union No. 610, affiliated with International Brotherhood of Teamsters, AFL–CIO.

WE WILL NOT interrogate you about your own and your fellow employees' union activities.

WE WILL NOT unilaterally change your vacation benefits which were in effect prior to January 5, 1998, without prior notice to the Union and without affording it an opportunity to bargain regarding these benefits.

WE WILL NOT fail and refuse to continue in effect your wage rates and the health and welfare and pension benefits which were in effect prior to January 5, 1998, without prior notice to the Union and without affording it an opportunity to bargain regarding these benefits.

WE WILL NOT unilaterally change your work assignments which were in effect prior to January 5, 1998, without prior notice to the Union and without affording it an opportunity to bargain regarding these assignments.

WE WILL NOT bypass the Union and deal directly with you by negotiating with you about your working hours.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL , on request, restore the wage rates, work assignments, and vacation, health, welfare, and pension benefits which were in effect prior to January 5, 1998.

WE WILL make you whole for any losses attributable to our unlawful unilateral conduct, with interest.

RAINBOW REPRODUCTIONS, INC. D/B/A
CENTRAL APEX REPRODUCTIONS